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09/735,193	12/11/2000	Frank Abdullovski		1736

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT

PAPER NUMBER

1761

13

DATE MAILED: 12/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application/No.  
09/735193

Applicant(s)  
ABOULLOVSK /

Examiner

S. WEINSTEIN

Group Art Unit

1761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

Responsive to communication(s) filed on \_\_\_\_\_.

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 1 1; 453 O.G. 213.

### Disposition of Claims

Claim(s) 3 is/are pending in the application.

Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 3 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

### Application Papers

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

All  Some\*  None of the:

Certified copies of the priority documents have been received.

Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

Copies of the certified copies of the priority documents have been received  
in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

### Attachment(s)

<input type="checkbox"/> Information Disclosure Statement(s), PTO-1449, Paper No(s). _____	<input type="checkbox"/> Interview Summary, PTO-413
<input type="checkbox"/> Notice of Reference(s) Cited, PTO-892	<input type="checkbox"/> Notice of Informal Patent Application, PTO-152
<input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review, PTO-948	<input type="checkbox"/> Other _____

## Office Action Summary

Upon further review of this application, and in view of the fact that new art has come to the examiner's attention and new information concerning one or more of the current references, the Final Rejection ,mailed 11/5/01, paper no. 6, is hereby withdrawn and a new non-final rejection is set forth below. The Office regrets any inconvenience that may arise by this decision.

The previous rejection relied on a number of references at least some of which were commercial database (i.e. Dialog) abstracts. The Board of Appeals no longer accepts the Dialog abstracts if the date of the Abstract itself is later than applicants filing date, even if the original publication abstracted is earlier than the filing date. The examiner made a conscientious effort to obtain the original articles for all of the abstracts. However, the original publications for References U, W, X and V", which were all applied against claim 3, could not be obtained and thus are no longer applied. A full copy of Reference U' (Product Alert, Marketing Intelligence service 6/9/97) and Snack World (4/97)-Ref V') have been obtained. The examiner had read these references (herein after referred to as Product Alert, 6/97 and Snack World, 4/97 to teach that the chips and cup were packaged together in the same bag. That is, one big held the loose chips and a cup of salsa. The examiner has discovered that this interpretation of the language of the references was not accurate. The examiner obtained information from a former employee of the company that the Harrys Premium Snacks package was, in fact, an outer bag containing both a separate inner bag of chips and a separate inner cup of salsa, separated from the inner bag.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Product Alert (6/9/97) in view of Vonderhorst et al (6,035,610) as further evidenced by the USDA application (and accompanying wrapper) or vice versa, i.e., Vonderhorst et al and the USDA application in view of Product Alert, both further in view of applicant's admission of the prior art, and further in view of Snack World (10/88) and Baking and Snack (2/94).

In regard to claim 3, it is noted that claim 3 is readable on an outer package containing chips, with or without an enclosing smaller package containing the chips, and a cup of dip. Reading the claim to be open to an inner package (since the claim is a comprising claim and it is silent as to the situation of the chips in the large package), then Product Alert teaches a package comprising a large package containing a plurality of chips and a cup that is smaller than the large package since it is in the large package and wherein the cup contains a dip. Vonderhurst et al as further evidenced by the USDA application can be relied on as further evidence of chips in a large package that further contains a dip, (col. 1, paragraph 5) and line 4, respectively,<sup>3</sup> (albeit, the dip is in a pouch instead of a cup). Claim 3 differs from Product Alert in specifically reciting that the cup is a "soufflé cup" having an overlay (presumably a cover) that is in airtight connection with the cup. As evidences by applicant's admission of the prior art the soufflé cup is notoriously old in the art (page 1, and page 4, Col. 1). Thus, applicant admits that the recited condiment cup is conventional. To modify Product Alert and substitute one conventional cup for another conventional cup for its art recognized and applicant's intended function would therefore have been unequivocally obvious. Similarly, reading claim 3 such that the chips and condiment are together in a single package, Vonderhurst et al. in their admission of the prior art and the USDA application, can be relied on to teach placing chips and a packaged dip in the same outer

package. Claim 3 differs from Vonderhurst et al and the USDA application in the particular package for the dip. That is, claim 3 recites a conventional soufflé condiment cup, admitted to be conventional by applicant's admission of the prior art, whereas Vonderhurst et al and the USDA application disclose a pouch. As noted above, applicant's admission of the prior art teaches condiment soufflé cups are conventional and Product Alert teaches placing a dip to be used with chips in a cup. To modify, the admission of prior art in Vonderhurst et al as further evidenced by the USDA application and substitute one conventional condiment package for another conventional condiment package for its art recognized and applicant's intended function is seen to have been obvious. Snack World is relied on as further evidence of a bag containing both chips and a dip. Finally, the art taken as a whole teaches various chips including tortilla chips and dips/condiments. The particular conventional dip one chooses to have provided is seen to have been an obvious matter of choice. Cheese and bean dips are both conventional as evidenced by Snack World (10/88) and Baking and Snack (2/94).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Weinstein whose telephone number is 703-308-0650. The examiner can generally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone number for the organization where this application is assigned is 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-305-0661.

Application/Control Number: 09/735,193  
Art Unit: 1761

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S. Weinstein/lap  
December 1, 2003

*Steve Weinstein*  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1761  
*12/8/03*